

THE
S P E E C H

OF

FRANCIS

H. Sturbury
LATE LORD

Bishop of Rochester,

At the BAR of the

HOUSE of LORDS,

On Saturday the 11th of *May*, 1723.

In his DEFENCE against the BILL then depending,
for Inflicting Pains and Penalties upon him.



L O N D O N;

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The SPEECH of Francis *late* Lord Bishop of Rochester.

My Lords,

I Have been under a very long and close Confinement, and have been treated with such Severity, and so great Indignity, as I believe no Prisoner in the *Tower* of my Age, and Function, and Rank, ever was. By which Means, what Strength and Use of my Limbs I had when I was first committed in *August* last, is now so far declined, that I am very unfit to make my Defence against a Bill of such an extraordinary nature.

The great Weakness of Body and Mind under which I labour, such Usage, such Hardships, such Insults as I have undergone, might have broken a more resolute Spirit and much stronger Constitution than falls to to my Share. Your Lordships were pleased to permit me to appear before the House of Commons, if I thought fit, lest that should be turned to my Disadvantage, as, in fact, the Counsel for the Bill have done their utmost towards it.

I should not have thought to decline any Occasion of justifying myself; but I crave leave to tell your Lordships some of the Reasons why I did not appear there, and make use of the Leave your Lordships gave me.

March 11. by the House of Commons it was thus resolved, " That it appears to this House, that *Francis*, Lord Bishop of *Rochester*, was principally concerned in forming, directing, and carrying on a detestable Conspiracy, &c."

Upon duly weighing which Resolution, and the Copy of the Bill, I found not any thing charged in the Bill, but what was fully contained and previously resolved in this Vote; and therefore whatsoever should have been offered on my behalf to that House, would have been an express Contradiction to it. And what Hopes I could have of Success in such an Attempt, I need not say; what they sent me, was the Preamble of the Bill only, which they could not alter, consistent with what they had resolved.

The Bill itself was to inflict Pains and Penalties, which followed, but there was no room to object against any of those which they had not then declared; they have since been added, and sent up to your Lordships in like manner, without any Oath made, or any criminal Act proved against me by any living Witness. And is a Person, thus sentenced below, to be deprived of all his Preferment, and his very Function, and to be a perpetual Exile, and to be render'd incapable of any Office and Employment? to be one whom no Man must correspond with by Letters, Messages, or otherwise? And, my Lords, one who is a Bishop of the Church of *England*, and a Lord of Parliament?

It is the first Instance wherein a Member of this House hath been so treated and prejudged, and (as I have once before said to your Lordships) I pray God it may be the last, and that such Precedents in this Kingdom may not be multiplied in After-Times.

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My Counsel have amply done their part, by arguing the Points of Law, by explaining and enforcing the Evidence, and showing the little Colour, Appearance, and Shadow of Proofs against me, (permit me to call them so) by answering what hath been offer'd against me, and by setting out the Consequence which such a Bill, founded and carry'd on in such a manner, and which enacts such severe Penalties, must and will be attended with.

Yet it becomes me to say something for myself, lest my Silence be construed Consciousness of Guilt, or at least an Unwillingness to enter into Matters of so dark and perplexed, so nice and tender a nature, as if I was not able, or did not care to clear and explain myself, and rather chose to leave it to the Management of others: I thank God I am under no such Restraint, and can speak to your Lordships on this Subject with great freedom and plainness.

But before I proceed, I beg leave that I may represent to your Lordships some particular Hardships under which I have laboured :

The first is reading Extracts of anonymous Letters, without suffering any other parts of the same Letters, tho' relating to the same Subject, to be read.——Another is,——Excusing the Decyphers from answering Questions asked by me, and which I thought necessary for my Defence, lest they should reveal their Art.——The next is, not suffering me to be answered by the Clerks of the Post-Office, lest the Secrets of that Office should be discovered. Another, was not suffering a Person, who had been at least ten Years out of the Secretary's Office, to answer any Questions which came to his knowledge by being ten Years ago in that Office.

Another, is reading Examinations neither dated, signed, or sworn to.

Another, is reading Letters supposed to be criminal, writ in another Man's Hand, and supposed to be dictated by me, without offering any Proof, that I either dictated them, or was privy to them.

Another, is not allowing me Copies of the Decypher'd Letters, tho' petitioned for, till the Tryal was so far advanced, and I so employed and weakned by it, that I had not sufficient time to consider them. Another, is not allowing me to read out of the Collection of Papers before the House any part of them, in order to discharge myself, but what hath been read by Clerks——And all this in a Proceeding where the Counsel for the Bill profess they have no legal Evidence, and that they are not to be confined to the Rules of any Court of Law or Equity, tho' as often as it is for their Service, they constantly shelter themselves under it.

My Lords, these are the Hardships which I previously mention, and only mention, and humbly lay before your Lordships.

By your Lordships leave, I proceed now to make that Defence, as well as I am able to make it in the Condition of Health I am now in, humbly praying your Lordships, if I find myself in any degree sinking under it, that you will indulge me, and allow me a little time to go on; because the general Charge of the Bill, is, That I have been deeply concerned in forming, directing, and carrying on a wicked and detestable Conspiracy, and was a principal Actor therein.

The Charge is divided into two Heads :

First, That I traitorously consulted and corresponded with divers Persons, to raise an Insurrection, &c. in this Kingdom, to procure Foreign Forces to invade it, &c.

Secondly, That I traitorously corresponded with the same intent with Persons employed, &c. But as neither part of this Charge hath been made good by the Counsel for the Bill, nor have they proved, nor attempted to prove me at one Consultation, nor is there any thing tends towards such a Proof, except the exploded Story of the *Burford Club*, and

two or three Hear-say Informations which were mentioned of my Lord *Strafford*, &c. and others to be concerned in the Management of this Affair. I have met all these Lords I own it, but at different times; and upon the best Recollection I can make, I never was in all my Life with any three of them at once, unless perhaps about some general Matters or Affairs depending in Parliament. The Earl of *Strafford* hath visited me, and I have, when in health, dined with him once at his House. At my Lord *North's* Table I have not eat; tho' I have great Honour for him, yet I never had any Intimacy with him, especially since the Affair of the Dormitory, wherein he appeared so against me, that I certainly had lost the Cause, had not his Affairs called him to *Holland*.

Lawson hath sworn, that this Lord did often visit me at *Bromley*, but in truth he never was there above twice or thrice in all his life-time.

I have not been once these two Years with Lord *Orrery* on any Business whatsoever; we twice dined together at the House of a Person, whose Name if I should mention, your Lordships would not think there was any harm at all in dining there. Sir *Henry Goring* I never saw in all my life, till he saw me at *St. James's*, and he was but once at *Bromley*; and the Occasion of his coming to me, was his placing four Sons at *Westminster-School*, and intending to breed up some of them to the Gospel: The last time I saw Sir *Harry Goring*, was about twelve Months ago, when I promised to bring down one of his Sons to be upon the Foundation; and I shall be sorry if I can't be as good as my word.

Your Lordships will excuse me for being so particular, when you consider how dangerous the Charge is, and how fit it is to clear the Persons charged, from such mischievous Correspondence; especially since it is with these, and these only that I have been speaking of, it is insinuated that I have held Consultations with, to forward the Conspiracy.

The first is an Intent, and indeed a Conspiracy, without a Consultation. How that too hath been made good, your Lordships will observe, that there is not one Overt-Act, or Circumstance of Time or Place, mentioned, proved, or alledged. I have not therefore consulted or conspired at home.

The next, and the only material Part of the Charge, is corresponding abroad with the Pretender, &c.

A high and heinous Accusation strongly asserted, much insisted upon, but how maintained, is the Question?

The true State of this part of my Charge, as well and as fully as I can recollect, is this, (I will not in any degree dissemble before you:) 1st, That I did the 20th April, 1722. dictate three Letters to Mr. *Dillon*, the late Lord *Marr*, and to the Pretender himself, under the feigned Names of *Chivers*, *Musgrave*, and *Jackson*; to which Letters the Names of *Jones*, *Illington*, and 1378, were all by my Direction subscribed.

Secondly, That afterwards two Letters in answer to these two sent to *Marr* and *Dillon*, one dated May 11th, and the other July the 25th, under the feigned Names of *Motfield* and *Digby*, were intercepted.

Thirdly, There is certain intercepted Correspondence between the Pretender's Agents abroad and *Kelly* here carry'd on by him, and that I was at the Head of it, and am answerable for what it contains.

This is the Substance of my Charge, all other particular Circumstances are made use of, as they thought would give Light and Strength to one or other of those Articles.

As to the first of these Points, *that I did dictate these Letters*;

That it could not be possible that I dictated these Letters, hath been made out to your Lordships by such a Concurrence of Evidence, so clear, full, and legal, as I persuade myself can have left no Doubt remaining upon any candid and indifferent Person; a plain Matter of Fact, supported

by such Testimony, cannot be overthrown by little Guesses and consequential Surmises.

My Lords, I was under the known Difficulty of proving a Negative, which in many Cases is not to be done; but it so happens in this Case, that peculiar Circumstances attend it as to point of Time. My being disabled in my Chamber, and attended before and after that time by some of my Servants, and receiving frequent Messages from others: The agreeing Testimony of my Servants, that no Stranger came near me about that time, and for some time before and after, and the full Evidence of the School at *Westminster*, hath enabled my several Servants to recollect the Time, and to furnish such a Proof of my Innocence in this matter, as is not to be mistaken, and the Clearness of the Impossibility of it.

They swear that they believe these three Letters to have been in the Hand-writing of Mr. *Kelly*, my supposed Amanuensis; your Lordships will remember, that their Oaths were at four Months distance from the time of seeing those Letters; during the whole Series of which time, it never hath appeared that they have compared one Original with another, and the only Original, as a Specimen, hath been proved, at your Lordships Bar, not to be the Hand-writing of Mr. *Kelly*; and be pleased to remember the very Supposition of Mr. *Kelly*'s being my Secretary, or any ways intimate with me, hath been fully sworn to be false.

If it be said, Who then writ these Letters, and with what View were they writ? The Answer to this is obvious, my being here at your Lordships Bar sufficiently explains it. It is enough to prove that I did not write or dictate them, and I have proved it abundantly. Let but any momentous Part of the Charge against me be made out with half the Evidence, and I will submit without any Dispute; eight or nine such Witnesses would have born down the Evidence of one or two that had sworn.

But where there is none on the one Side, but all on the other Side who appear, and that give direct positive Evidence, can your Lordships deliberate a moment for the Reason of giving your Judgment, which ought always, in doubtful Cases, to lean to the doubtful Side; and so taking this Point as it stands, and if it be so, there is an End of the whole matter, for all other Insinuations, feigned Names, and obscure Passages in Letters, depending upon this, must fall together.

As to the other Part of the Accusation, when it is said the Letter to *Jackson* was a Letter to the Pretender, I have nothing to do with it; he that writ the Letter, when known, will best be able, and most concerned, to disprove it.

Since this Objection carries a very odd Sound, I shall briefly shew your Lordships how that stands: *Jackson*, in a Cypher of *Plunkett*'s, is said to denote the Pretender; therefore in a Letter, supposed to be dictated by him, and put into Letters (Cyphers) by *Plunkett*, consisting of one hundred and fifty Names, of which not one is used in any of the Letters attributed to Mr. *Kelly*, three or four of these Names are used by Persons supposed to have writ to Mr. *Kelly* from Abroad, but not one of them is used by him; nor doth *Jackson* ever, in his part of the Correspondence, stand for the Pretender, but he is always under other Appellations: nay, *Plunkett* himself, in all his Letters writ in decyphered Names, never styles the Pretender *Jackson*, but either *Joseph*, or *Jepson*.—Why should a Name, used in *Kelly*'s Correspondence, be explained by *Plunkett*'s Cypher, when *Kelly* appears to be no ways acquainted with him, and *Plunkett* himself did never dictate to him? I forbear Repetition; I only add, that in this Case there is nothing that may not be proved.

The Letter to *Dubois* there is little said of, because there is no use made of it; it is charged in the Report as a Letter which I had received from abroad.

abroad. The Tables are now turned, and I myself designed to have sent this Letter to a feigned Correspondent, but kept it among my Papers under my Seal: For what end? the Letter itself is an errant Delusion; Why, to furnish Proof, which is much wanted, of my receiving Letters that were directed *Jones* and *Illington*; and it is very strange I, who am represented as being so very cautious, should be so negligent in this, and preserve something that is of no use, and yet might hurt me so much when discover'd.

It is absurd to think, that I should by that means mention the Name of my Correspondent, and mention the Name of *Johnson*, which the Committee of the Lower House observe was constantly with me.

I know not what farther can be said for this Matter, till the Counsel have further explain'd it, and show'd what use they make of this Letter, which hath given your Lordships so much Trouble, and which I own I do not comprehend.

Here is still a fifth Letter, which I have acknowledg'd to be my Hand; that which was taken on my Servant. Mr. *Reeves* hath made some Observations on it; I have taken Minutes of them, and I think they are these: He observes that the Bishop doth not in his Letter insist on his Innocence in general, but considers only what Evidence doth affect him.

It comes out at last for whom my Letter was designed, and I think that an Answer to Mr. *Reeves*'s Observations, and I shall explain it no further. He observes, tho I clear myself from the Knowledge of *Laver*, *Neynoe*, &c. there I say nothing of *Kelly*.

The Gentleman I designed the Letter for, knows it was in answer to one wrote to me about *Laver*, and will swear it himself, if there was room for it.

The third Observation is, where speaking of myself, I say, 'If I cannot ward the Blow, I must be a Prisoner some Years without Remedy;' from which he was to infer, not in that good-natur'd way he generally did, my Meaning must be, that I was conscious of Guilt.

I apprehended an Impeachment would have been lodged and never prosecuted, as in the Case of my Lord *Danby* and the Earl of *Oxford*, and there I should have lain without Tryal, and without Bread.

The second Article of my Charge, is the two Letters from *Mar* and *Dillon*, under the feigned Name of *Motfield* and *Digby*, which were intercepted. One of these they have dropt.

That I received them, is not pretended; both Letters, tho they copied, without a criminal Expression or Word of Business in either of them, they would have affected me in some degree, if received by me, and I was the Person as is supposed to have writ the Letters to which they are Answers. That I used to have any Correspondence, is that proved? Is not one and the same necessary in order to ascertain the Charge?

Any Man that pleases may write to me, and take those Names upon him; I am not to answer for that, unless I have appeared to receive them, and kept up the Correspondence.

The Letter from *Motfield*, dated 11 May, cannot be reasonably thought to have been wrote with any other View than that of being intercepted, and of fixing upon me the Letter of April 20th.

This Letter is committed to the common Post-Office, and sent upon this Errand; one may doubt who writ it, but one cannot doubt with what Design it was writ: Your Lordships Wisdom will see thro those malicious Disguises, and not make me account for Letters which have been banded to and fro between two unknown Correspondents, on a Design to raise a Suspicion of a third Person, altogether a Stranger to what is writ. And here I desire that the Observation made by one of my Counsel may not be forgot;

forgot ; that is, all the intercepted Letters from abroad, that Persons that lay hid under secret Names are discover'd by doing of such Deeds, and by such Circumstances as will fasten those Names upon them, tho the Committee were at a Guess, yet they were often at a Loss.

In my Case the fictitious Names applied to me are often attended with such Descriptions and Circumstances, as very naturally lead those that offer these Letters to fix them on me ; the Writers of them use all their Art not to disguise, but to open the thing, and seem to be in pain lest they should not be well enough understood.

This being contrary to the Method of Reserves in all other Cases, smells strong of a malicious Design.

The Letter of *July 25th*, from *Digby* to *Weston*, is not well contrived as it should have been, yet I am to be understood by it, because of the Circumstances I was then under, which the Writer was apprised of.

These are the only two Instances of Letters supposed to be writ from abroad : They are not consistent : Shall they affect me in so high a manner ?

It remains to be considered in the third place, whether there was a supported Correspondence between the Pretender and his Agents and Mr. *Kelly* here ? Whether I was at the Head of it, and am justly to answer that I am not ? Mr. *Kelly*, I hear, hath owned at your Bar, and declared, which I also declare, I never knew a Line of any Letter he writ to Foreign Parts.

I meddle not with what concerns him any further than when it may affect me.

The chief Part is the Present of the Dog, the Account of that is in a Letter to *Hatfield*, dated *May 5*. not signed ; in which are these Words, *The little Dog was sent ten Days ago, and ordered to be delivered to you* : but there is no Intimation in this, or any other Letter from abroad, that this Present was intended for me.

In two Letters from hence, by whom writ it doth not appear, some body is meant under the different Names of Mr. *Jones* and Mr. *Illington*, in such manner as designed for the same Person ; but Circumstances are neither applicable to myself or my Wife, or me particularly. The Letter dated *May 7th*, from *Hatfield* to *Musgrave*, which being five Days after the Burial of my Wife, cannot mean her ; and being but five Days after, it can as little mean me : So that the Writer of this Letter must either have known nothing of my Family-Affairs, or if he did, must dissemble his Knowledge of them, to raise a suspicion, and in either Case what he says is not to be regarded. The Surgeon and Mr. *Kelly* only knew any thing of this matter, and they can best clear it.

Mrs. *Barnes*, she varies, and sometimes the Dog is for me, and sometimes for her.

As for myself, I never asked for, received, or saw this Present, nor know any thing of it, but from common Fame ; nor have I to this day had any Message or Letter whatsoever concerning it. The End of this Design seems to be, to point me out by the Name of *Jones* and *Illington*, subscribed to the Letters of *April 20th*, by using them again in relation to this Present.

And perhaps they are not much in the wrong to think, that one intercepted Dog should be of as much use as ten intercepted Letters. Both Contrivances then must have succeeded, had I not been able to prove that those Letters were not with my Order or Knowledge ; and therefore the Use of their Names, in subsequent Letters, is a Continuance of the Fraud, and this obviously runs through the whole of the Correspondence ; but wherever the Names of *Jones* and *Illington* are, they are used in applying them to me, because they are the same.

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These Points have not only been deny'd, but disprov'd with all Manner of Credence and Clearness.

My Council have shew'd, that all these suspicious Correspondencies are to the last Degree absurd to apply to me, and no one would apply them: That I could not order the Letters of the 20th of *April*, to which the Names of *Jones, &c.* are subscrib'd, I think is plain, and then the Evidence falls or depends upon it.

As to the Journies to and from *Bromley*, where the Prisoner *Kelly* had frequent Access to me, and therefore I might probably dictate those Letters, the Council for the Bill have not open'd themselves on that Head; but your Lordships have heard it made out, and because it is material I shall repeat it.

(Here *Wood's Examination* was read.)

By all these Accounts, nothing could have offer'd easier for the Persons themselves to manage here, in getting an Account of my Neighbours in order to render the Contrivance more plausible.

That Mr. *Kelly* is no Stranger to me I own; but that he is in any Degree intimate with me, or frequently saw me, I deny; and what Evidence is there from them to the contrary; or how is this solemn Denial at your Bar contradicted?

The Chairman says, He carry'd him twice or thrice to the Deanery three or four Years ago; and this *Brown*, the Chairman, he swears, he carry'd me once in three or four Years Time. I believe he may. The Porter he says, That he brought a Letter and some Stockings from *Kelly* to me. The Foundation of this Story is true, for Mr. *Kelly* used to furnish me with Stockings and Gloves; not but that the Circumstance of the Porter coming up to my Bedchamber at that dirty Time of the Year, is very extraordinary; and even this Evidence owns, he was never sent by me to him.

Now, on the other Side, there is the Evidence of almost all my Servants, who have, upon Oath, attested, that they do not know either the Name, or the Face of Mr. *Kelly*, which could not possibly be, did he use frequently to resort to me. Such a slight Acquaintance as I had with him, could not be any Temptation to enter into Secrets with him of such a dangerous Consequence as these are, which the Report insinuates to have pass'd between us; however, Suspicion is not now the Business of Proof; they that prove something, may be allow'd to suppose more; they that prove nothing, have no Right to indulge their Suspicions and Conjectures to the Ruin of any Man: Twenty Probabilities, allow'd to be such, are not equal to any one Matter of Fact well attested; it may strengthen the Fact, but cannot support it. They cannot be Evidence themselves, because one Probability may be set against another.

I use this Distinction between Evidence in Law, and reasonable Evidence, because the Council for the Bill have asserted something like it.

I own I always thought the Publick Law of the State the Publick Reason of the State, and whatever might be reasonable Evidence; whatever it is in another Country, yet, in this Country, no Evidence can be reasonable that is not legal: But I ask, What Sort of Evidence, either in Reason or Law, is brought against me? How am I prov'd to consult and correspond to raise an Insurrection against his Majesty and his Kingdom, and to procure a foreign Force to invade the same in Favour of the Pretender?

How am I prov'd, in the second Place, to have corresponded with the same Pretender, and with Persons employ'd by him? Is one Article of these Charges made out against me with any Colour of Reason? Suppositions without Proof, Suppositions disprov'd, and shew'd to be vain, and unjust.

If the Proof in these Cases want Strength, can the Hearsay of *Neynoe* supply the Want of Proof, and render it valid, since *Neynoe* pretends, for ought that appears, not to have known any thing of me; he only heard *Kelly* say so, and Mr. *Kelly* denies it; and there is, I think, no Reason why such a dead

Evidence should effect me, or *Kelly* himself, much less me through him. Was *Neynoe* alive, and *Kelly* dead, and incapable of contradicting what *Neynoe* said, I believe what *Neynoe* said would not be of any Weight; besides, what *Neynoe* dead says, and *Kelly* now alive denies, ought not to have any Force.

Concerning Hearsay Evidence in General, and concerning the due Regard to it, I humbly desire your Lordships, that a Passage may be read out of Sir *John Fenwick's* Bill of Attainder. (The whole Preamble read.)

My Lords, I humbly desir'd to have this read, because I thought it would take away a Distinction between legal and Parliamentary Evidence; that what was not legal might be Parliamentary. I believe here is a Condemnation of him by Parliament; therefore, I think, the Condemnation of him must be by Parliamentary Evidence. It is recited in this Act as one of the Inducements that mov'd the King, Lords, and Commons to pass that Act, that Sir *John Fenwick* had contriv'd and fram'd several Papers, &c. only by Hearsay.

Shall that be accepted in this Parliament for Evidence, which is declar'd the only Motive of attainting a Man in another? If it was judg'd hard in Sir *John Fenwick's* Case to charge a Man by Hearsay, can the being thus charg'd be any Proof against me? Sure the House of Commons in 96, that brought that in, would have so thought, nor would those of your Lordships consented here, or elsewhere, to have pass'd it.

As for those that did not consent, I will venture to say, I am exceedingly puzzled to know why they did not oppose Sir *John Fenwick*, but favour'd his Case, and are yet against me. Is the Guilt objected to me, if prov'd, in any Measure like his? Or is there any Comparison between the Proof against him and me?

As to the Paper and Information given in by *Neynoe*, and printed in the Appendix, it is plain he was drawn in to have sworn backward or forward, to have affirm'd or deny'd any thing. He knew a certain Lord of the Council, that gave me Notice of my being taken up some Days before it happen'd. He knew what Use and Purpose the Protests of your Lordships were chiefly design'd for and calculated; and it appears by his Paper that was taken in his Pocket after his Death, that he had undertaken to give a positive Account, and design'd either to ask or receive such a Sum of Money.

That he was the late Earl-Marshall's Bedfellow for several Months, and had drawn up Heads for Memorials to be deliver'd to the Regent; but he had kept no Copies of these Heads, or foul Draughts, which would have shewn whether they were given in to promote it, or discover it in either; the Evidence of being then employ'd, would have been of Service; but they have not been able to produce a Line of such Heads or Memorials, yet the Report of the House of Commons, upon the Basis of these Memorials, build the whole Fabrick. He knew that I went under the Name of *Jones and Illington*, and undoubtedly he knew Mr. *Dubois*: 'If the Scheme of Writing that Letter myself had been seen, he would have found out a Reason for the Correspondence; and 500*l.* would have made him affirm, that he carry'd the Letter himself. He knew the Pretender's particular Opinion of me, or of any Body else; that he rely'd on Advices from me: How did he know that? He told him so. Who told him? It is not suppos'd Mr. *Kelly* had it from himself, but from Persons of high Estate, and that were near the Pretender.

Let me speak, my Lords, as always I hope I shall, with that Modesty as becomes Justice, but yet with Freedom to you.

Hath nothing been open'd to you concerning this Man's Character, and his secret Transactions? Is it possible to believe this Pretender to Secrecy, could have had or shall he still have any Degree of Weight, that threw away his Life, rather than venture to stand to the Truth of what he had said before his Death, and then he could have been contradicted, or Pangs of Conscience might have made him unsay what he had said; but a dead Man can retract nothing;

nothing; what he hath writ, he hath writ the Accusation; must stand just as it did, as far as it concerns him; and we are depriv'd of the Advantage, which Truth and Remorse once extorted, and would have again extorted from him; however, I would have been glad to have had all that ever this Wretch said, and would hope that by comparing of the several Stories, which he several Times told, some Light might have been gain'd, which is now wanted: — Particularly by the Knowledge of what he said freely and voluntarily, when he was in good Humour, and before his rough Usage, on his Return from *Rome* had frighted him; but I think we have the Evidence only of a few of the last Days of his Life, all the preceding Time is Blank; yet himself, he underwent frequent Examinations, but they were not, it seems, so maturely weigh'd and digested, as to be thought worth the committing to writing; but he is gone to his Place, and hath answer'd for what he hath said at another Tribunal. I desire not to disturb his Ashes, farther than what is necessary for my Defence.

Your Lordships will observe first, the Inconsistency of some Part of the Charge. Secondly, the Improbability of it. The Report takes Notice of three several Periods, or Stages of Time, that by Consequence of some Memorials from the Regent, it did not take Place; the first was, during the Election; the second was, the King's going to *Hanover*; and the third was, the breaking up of the Camp; there is not the Hint as to the last of these three Designs, in any of his Papers, and in the Recital of the Bill it is mention'd as the third Part of the Plot, and the most detestable Part of the Design, to lay violent Hands on his Majesty and his Family.

There is not the least Colour of Proof, as to the first Part of the Conspiracy, which was to take Place at the Election; their only Reason for that, is from a Passage, where it is said, that the present Opportunity is elaps'd, that is, the Opportunity of the Election.

I shall recite the intercepted Passage, as it lyes there, and make some Reflections on it: *Notwithstanding the Opportunity is elaps'd*, (says the Writer to *Jackson*) *I agree with you, another may offer before the End of the Year, tho' not perhaps every Way so favourable.*

The Committee suppose this Letter to be from *Kelly*, and dictated by me, and they suppose the Words to refer to Time, and from those Suppositions infer that I knew something of it. On the contrary, I shall on the two first Suppositions, shew the Impossibility of it; if this was a Letter from me, or from any other Person, dictated by me to the Pretender, I must write as in Answer to some Letter sent from them to me, in repeating the Expression; and his Opinion in the Letter, must have been founded on Intelligence before receiv'd: This Intelligence, considering the Distance between *London* and *Rome*, must have been communicated two Months, if not longer, before the Date of this Letter; if we go back two Months, and talk of the Election being elaps'd, it was not begun; consequently that Opportunity in the Letter could not possibly mean the Time of the Election; and if so, it is impossible that it should be a Letter to the Pretender, that can consist with the Charge of the Person's writing it *April 1720*.

If it be a Letter writ in good Earnest, it appears they had given over all Thoughts at that Time: *I agree with you* says he, *another may offer before the End of the Year*; and yet he finds some Words in a Letter writ ten Days after, wherein under the Name of *Jones*, I am made to be deeply concern'd in a Conspiracy.

How can this be consistent, if I writ and directed that Letter, and was engag'd in the second Part of the Conspiracy?

Both cannot be true, both may be false; and I hope I have satisfy'd your Lordships, that as I did not dictate the one, so I was no Ways concern'd in the other.

Can any one believe, that under the sad Circumstance of being afflicted by the Death of my Wife, I should be concern'd in an Affair of this dangerous Nature? Was that a Time to provide for a Stranger? And for a Man unless under the Power of Prejudice, to believe such an Expression, or that I had such a Conjecture: I forbear former Instances.

I shall now consider the Improbability, as well as Inconsistency of the Charge brought against me without positive Proof. You will allow me to answer the Indictment in the same Manner as it is laid.

Is it probable that if I were engag'd in any such Design, no Footsteps should be seen of any Correspondence I had with the late Duke of *Ormond*, to whom, of all Persons abroad, I was best known, and to whom I had the greatest Regard, and still have all the Regard that is consistent with my Duty to my King and Country?

Is it probable that I would choose rather to engage in such Design with two Persons, one of which I never saw, and the other scarce acquainted with?

Did I not know, what all the World thinks, that he had left the Pretender several Years, and had a Pension abroad? Is this a Season for me to enter into Conferences with him about restoring the Pretender, and do this not by Messages but by Letters, not sent by Messengers but by the common Post? That by thus writing to him by the Post, I should advise him after the same Manner to write to me, and by these Means furnish Opportunities, towards detecting the Persons and bring myself into Danger? How doth that Charge of Caution and Secrecy belong to me? Must not I have been rash to have laid myself open in such a Manner? This is an inconsistent Scheme, the other a bold Assertion. Is it probable when attending the Sick Bed of my Wife, and expecting her Death, not daily but hourly, that I should enter into Negotiations of this kind?

There was no Need of dispatching any of those three Letters, merely to excuse my not writing, the Circumstances of my Family had been a sufficient Apology, and more effectual.

Is it probable that when I was carrying on publick Buildings of various Kinds, at *Westminster*, and at *Bromley*, consulting all the Books from the *Westminster* Foundation, engaging in a Correspondence with learned Men, about Subjects of Divinity; that at that very Time, I should be carrying on a Conspiracy? Those that maintain such Thoughts without Reason, may also condemn me without Argument.

Is it probable that I should hold, meet, and consult, in forming and forwarding this Correspondence with no Body, and no where?

That I, who always liv'd at Home, and only at Dinner ever stirr'd out of my Chamber; receiv'd all Persons that visited me, and was deny'd to none, should have an Opportunity to be so engag'd? And if I had, that none of my Domesticks and Friends should ever observe any Appearance of any such Thing? No Evidence among my Papers, tho' they were all seiz'd at both my Houses, and confining all my Servants, but one now for about 10 or 11 Weeks, searching him twice in the Tower, and searching my self, nothing of Consequence appears, nor is any one living Witness that charges me with any thing that is really true.

Is it probable, that I should form and direct a Conspiracy, and carry it on with any Success, that am not us'd to Arms, which I am no more acquainted with, than with the Persons employ'd on those Occasions? My Way of Life hath not led me to converse with such Men and such Matters, except on the Occasion of meeting in Parliament, but in a Council of War, I never was. Have I yet in any Instance of my Life meddled remarkably out of my own Sphere, in Affairs foreign to my Business and Character? I might have been thought to have been too active in my proper Station and Business; but I was never charg'd with War, nor any Ways inform'd in the Art of it.

Is it probable, that Persons concern'd in such Military Scheme, (if any such be form'd by Men of the Sword that apply to such Business) should be punish'd without any Proof?

And must I, whose Way of Life is set at the greatest Distance from such Persons, and from the very Suspicion of being concerned with them, suffer all the Pains and Penalties short of Death, which the Parliament can inflict for a suppos'd I know not what, and what I don't to this Day apprehend.

Here is a Plot of a Year or two standing to subvert the Government with an arm'd Force; an Invasion from abroad; an Insurrection at Home; just when ripe for Execution it is discover'd; and 12 Months after the Contrivance of this Scheme, no Consultation appears, no Men corresponding together, no Provision to be given, no Arms or Officers provided, not a Man in Arms, and the poor Bishop hath done all this.

What could tempt me to step thus out of my Way? Was it Ambition and a Desire of climbing into a higher Station in the Church? There is not a Man in my Office farther remov'd from this than I am; I have a hundred Times said, and sincerely resolv'd, I would have been nothing more than I was, at a Time when I little thought of being any thing before, and I can give an Instance of this Kind if I thought proper.

Was Money my Aim? I always despis'd it too much perhaps, considering I had Occasion for it; for out of a poor Bishoprick of 500 *l. per Ann.* I have laid out 800 *l.* I took not one Shilling for Dilapidations, and the rest of my little Income has been spent as is necessary, as I am a Bishop. Nor do I repent of these Expenses now, not doubting in the least, but that God who hath liberally provided for me hitherto, will still do it, and on his good Providence I securely rely.

Was I influenc'd by any Dislike of the establish'd Religion, and secretly inclin'd towards a Church of greater Pomp and Power? I have, my Lords, ever since I knew what Popery was, oppos'd it, and the better I knew it, the more I dislike'd it.

I began my Study in Divinity, when the Popish Controversy grew hot with that immortal Book of *Tillotson's*, when he undertook the Protestant Cause in general, and as such I esteem'd him above all.

You will pardon me, my Lords, if I mention one Thing:

Thirty Years ago, I writ in Defence of *Martin Luther*, and have preach'd, express'd, and writ to that Purpose from my Infancy, and whatever happens to me, I will suffer any thing, and will, by God's Grace, burn at the Stake, rather than depart from any material Point of the Protestant Religion, as profess'd in the Church of *England*.

Once more: Can I be suppos'd to have a Favour to Arbitrary Power? The whole Tenor of my Life hath been otherwise: I was always a Friend of the Liberty of the Subject, and to the best of my Power constantly maintain'd it: I may have been thought mistaken in the Measures I took to support it.

It matters not by what Party I was called, so my Actions are uniform.

To return to the Point: The Charge brought against me in the Manner it is brought, is improbable: If I could be guilty of it, I must have acted under a Spirit of Infatuation; yet I have not been ever thought an Idiot or a Madman.

My Lords, as to the Pains and Penalties contain'd in this Bill, they are great and grievous, beyond Example in their Nature and Direction.

I am here, my Lords, and have been here expecting an immediate Tryal. I have, my Lords, declin'd no Impeachment. The Correspondence with the Earl of——was made Treason, but with me 'tis only Felony, if there is one Witness to prove it. He was allow'd the Conversation of his Children, by

the exprefs Word of the Act: Mine are not fo much as to write fo as to be fent to me.

What is moft particular in my Cafe, I will repeat diftinctly, that my Reverend Brethren may hear it. I am render'd incapable of uſing or exerciſing any Office, Function, Authority, or Power Eccleſiaſtical, not only in his Maſteſty's Dominions, but any where elſe: Very hard! Such Spiritual Power as is not deriv'd from Men, but God himſelf, ſhould be taken from me.

My Lords, I inſiſt on my Innocence; that I am not guilty; and if I am not prov'd ſo, your Lordſhips will thus judge; if otherwiſe, I perſwade myſelf I ſhall find ſome Degree of Mercy.

You will not ſtrip a Man of his Subſtance, and then ſend him where he cannot ſubſiſt; you will not ſend him among Strangers, and then hinder others from performing Humanity to him; you will not give him leſs Time to order his Affairs, and depart the Kingdom, than the Bill hath taken in paſſing through both Houſes.

You will not divest him of all his Preferments, the chiefest Privileges he hath left, becauſe of his Confinement; nor render him to any of his poor Fellow-Subjects, leſs uſeful.

That Great Man I laſt mention'd, carry'd a great Fortune with him into foreign Parts, and had the Languages; was well acquainted abroad: The Reverse of all this is my Cafe; I indeed am like him in nothing but his Innocence, and his Punishment. It is in no Man's Power to make us differ in the one, but 'tis in your Lordſhip's Power to make us differ widely in the other, and I hope your Lordſhips will do it.

But to ſum up the Arguments: It hath been frequently obſerv'd, that the higher the Crimes are, the fuller the Proofs ought to be. Here is a Charge of High Treason brought againſt me, with no Evidence at all.

My Lords pardon me, what is not Evidence at Law, can never be made ſo by any Power on Earth; for the Law that requir'd the Evidence, is as much the Law of the Land, as that which declares the Crime.

It is equally unjuſt to declare any Proof legal, becauſe of my Proſecution: As extraordinary would it be, to declare the Acts themſelves, *ex poſt facto*.

Never was there a Charge of ſo high a Nature, and ſo weakly prov'd!

A Perſon dead, ſo that there is not an Opportunity to falſify him, by contradicting him, ſupported not by any one Evidence, not by any one Proof of any Thing that hath been writ or receiv'd by me, not even by any one criminal Word, prov'd to have been ſpoken by me; but by intercepting Letters and Correſpondence, in which appears not the leaſt Certainty.

Some of thoſe Letters, ſhewn to Perſons, with a Deſign to faſten ſomething on them; others writ in Cyphers, and fictitious Names, throwing out dark and abſtruſe Hints of what Perſons went by thoſe Names, ſometimes true and ſometimes doubtful, and often falſe, who continue all the while Strangers to the whole Tranſaction, and never makes the Diſcovery, 'till he feels and finds it advancing itſelf towards him: My Lords, this is my Cafe in ſhort.

I have a hard Taſk to prove my Innocence: Shall I ſtand committed before your Lordſhips on ſuch an Evidence as this? The Hearſay of an Hearſay; a Party dead, and that deny'd what he ſaid; by ſtrange and obſcure Paſſages, and fictitious Names in Letters; by the Conjectures of Decyphers, without any Opportunity given me of examining and looking into the Truth of their Decyphering; by the Depoſitions of Poſt-Office Clerks about the Similitude of Hands; their Depoſitions made at diſtant Times, and without comparing any one of the Originals; by a ſtrange Interpretation of them, for nothing more, I am perſwaded, can be made of the Arguments, than what is call'd the intercepted Correſpondence.

Shall

Shall I, my Lords, be depriv'd of all that is dear to me, and in the Circumstances I am in, scarce able to bear up, and by such an Evidence as would not be admitted in any other Cause, or in any other Court.

And shall it be receiv'd against a Bishop of this Church, and a Member of this House? God forbid. Give me Leave to make Mention of a Text in Holy Writ: *Against an Elder receive not an Accusation, but by two or three Witnesses.* It is not said, Condemn him not upon an Accusation, &c. but receive it not; and I am something more than an Elder, and shall an Accusation against me be countenanced, without any one Instance of Proof to support it?

This is not directly Matter of Ecclesiastical Constitution: There you read, one Witness shall not rise up against an Elder; but here, at the Mouth of two Witnesses, or three Witnesses, shall the Matter be establish'd: and as this Rule was translated in the State of the Church, People always thought fit to follow it.

Shall I be the first Bishop in this Church, condemn'd upon Conjecture, on fictitious Names and obscure Passages in Letters, instead of two or three Witnesses.

Will not others endeavour to make the same Precedent, and desire the said Influence of it to succeeding Ages, and even concur in such an Act, in order to render me incapable of using or exercising any Power or Authority, &c. Is this good Divinity, or good Policy?

As to the Justice of the Legislature, in some Respects it hath as great a Power as the Sovereign Legislator of the Universe; but he can do nothing unjust. But tho' there are no Limits to be set to a Parliament, yet they are generally thought to incline themselves, to guide their Proceedings in Criminal Cases, according to the known Law.

The Parliament may order a Criminal to be tortur'd, Who can say they cannot? But they never did, nor ever will, I hope; because Torture is used in other Countries, and not known here.

Is it not torturing to inflict Pains and Penalties on Persons suspected of Guilt not plainly prov'd guilty? It is not much unlike it. The Parliament may, if they please, as well as upon a Bill of perpetual Imprisonments, upon a Bill of perpetual Exile reserve to the Crown a Power to determine the one as well as the other. They have so enacted it in the one Case, but they have not enacted it in the other. The Law knows nothing of such absolute perpetual Imprisonments.

The Law may, in like Manner, condemn a Man on a Charge of Accumulated and Constructive Treason. They did so in the Case of the great Lord *Strafford*, and that by Accumulated and Constructive Proof of such Treason, that is, by such Proofs, and well interpreted, as plainly to communicate Light and Strength to each other, and so to have all Force, without the Formality of Evidence. Was such Proof ever admitted by any one, to deprive his Fellow Subject of his Fortune, of his Estate, his Friends, and Country, and send him in his old Age, without Language or Hope, without Employment to get the Necessaries of Life, to starve: I say again, God forbid.

My Ruin is not of that Moment to any Number of Men, to make it worth their while to violate, or own to seem to violate their Constitution in any Degree, which they ought to preserve against any Attempts whatsoever.

But where once such extraordinary Steps as these are taken, and we depart from the fixed Rules and Forms of Justice, and try untrodden Paths, no Man knows where he shall stop.

Tho' I am worthy of no Regard, tho' whatsoever is done to me may, for that Reason, be look'd upon to be just, yet your Lordships will have some Regard to your own lasting Interest, and that of Posterity.

This is a Proceeding with which the Constitution is not acquainted, which, under the Pretence of supporting it, will at last effectually destroy it.

For

For God's Sake lay aside these Extraordinary Proceedings, set not up these new and dangerous Proceedings; I for my Part will voluntarily and chearfully go into perpetual Banishment, and please my self that I am, in some Measure, the Occasion of putting a Stop to such Precedents, and doing some Good to my Country, and will live, wherever I am, praying for its Prosperity; and do, with the Word of Father Paul to the State of Venice, say, *Ego perpetuo*: It is not my departing from it; let me depart, and let my Country be fix'd upon the immoveable Foundation of Law and Justice, and stand for ever.

I have, my Lords, taken up much of your Lordships Time, yet I must beg your Attention a little longer.

Some Part of my Charge hath been disproved by direct and full Evidence, particularly of writing the Letters of the 20th of April, or that I knew who wrote them, which I utterly deny that I ever did or as yet do know. Other Parts of the Charge there are, which are not capable of such Disproof, or indeed require it; there I rest. But, my Lords, there is still a Way allow'd of vindicating my self. It is generally Negative; that is, by protesting and declaring my Innocence to your Lordships, in the most deliberate, serious, and solemn Manner; and appealing to God the Searcher of Hearts, as to the Truth of what I say, as I do it in what follows: I am charg'd in the Report with directing a Correspondence to Mr. Kelly; but I solemnly deny that I ever, directly or indirectly, saw a single Line of any of their Letters till I met with them in Print: Nor was the Contents of any of them communicated to me. I do in the next Place deny, that I was ever privy to any Memorial to be drawn up to be deliver'd to the Regent: Nor was I ever acquainted with any Account to be made on the King's going to Hanover, or at the Time of the Election: Nor did I hear the least Rumour of the Plot to take Place after the breaking up of the Camp, till some Time after Mr. Laver's Commitment. I do with the same Solemnity declare, that I never collected, remitted, receiv'd, or ask'd any Money of any Man to facilitate these Designs; nor was I ever acquainted with, or had any Remittances whatsoever from any of those Persons. That I never remitted or drew any Declaration, Minutes, or Paper, in the Name of the Pretender, as is expressly charg'd upon me. And that I never knew of any Commission issu'd, Preparation of Arms, Officers, or Soldiers, or the Methods taken to procure any, in order to raise an Insurrection in these Kingdoms. All this I declare to be true, and will so declare to the last Gasps of my Breath.

And I am sure, the further your Lordships examine into this Affair, the more you will be convinced of my Innocency. Yet they contain all the Capital Articles of which I am accused in the Report of the House of Commons.

Had the Charge been as fully prov'd as ascertain'd, it had been vain to make Protestations of my Innocence, tho' never so solemn.

But as the Charge is supported by the slightest Probabilities, and which cannot be disprov'd in any Instance, without proving a Negative; allow the solemn Affirmations of a Man in Behalf of his own Innocence to have their due Weight, and I ask no more, than that they may have as much Influence with your Lordships as they have Truth.

If in any Account there shall still be thought by your Lordships to be any seeming Strength in the Proofs against me: If by your Lordships Judgments, springing from unknown Motives, I shall be thought to be guilty: If for any Reasons, or Necessity of State, in Wisdom and Justice, of which I am no competent Judge: If your Lordships shall proceed to pass this Bill against me: I shall dispose my self quietly and tacitly to submit to what you do: God's Will be done: Naked came I out of my Mother's Womb, and naked shall I return; and whether he gives or takes away, blessed be the Name of the Lord.

F I N I S.

